IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1714 OF 2006
AND
CRIMINAL WRIT PETITION NO.1715 OF 2006

Sanjay R. Mahamuni ...Petitioner
(in both the Petitions)

vs.

Pratibha S. Mahamuni and Anr. ...Respondents
(in both the Petitions)

Mr.J.M.Puranik for the Petitioner
Mr.Rajesh More, A.P.P. for State
Mr.C.Venkatesh Shashtry for Respondent No.1

CORAM: A.S.OKA,J.
DATE : OCTOBER 19,2006.

ORAL JUDGMENT:

1. I have heard the learned Counsel for the Petitioner and the learned Counsel for the first Respondent. The Petitioner is the husband and the first Respondent is the wife. The challenge in these Petitions filed by the Petitioner-husband is to a common Judgment and Order dated 3rd July 2006 passed by the 5th Ad hoc Additional Sessions Judge, Pune in Criminal Revision Application Nos.182 and 183 of 2006 preferred by the Petitioner. Both these Petitions can be conveniently disposed of by a common Judgment.

2. There is no dispute that the marriage between the Petitioner and the first Respondent was solemnised on 21st May 1998. The first Respondent filed Marriage Petition No.140 of 2002 under section 9 of Hindu Marriage Act,1955 for restitution of conjugal rights. In the said Petition, an order was passed under section 24 of the said Act of 1955 on

21st July 2004 by the learned 6th Joint Civil Judge Senior Division, Pune directing the Petitioner to pay interim alimony of Rs.1500/- per month from the date of application till the decision of the main Petition. The said Petition has been dismissed by Judgment and order dated 28th November 2005.

3. In the meanwhile, the second Respondent for herself and on behalf of her minor son filed an application under section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) for grant of maintenance. By a Judgment and Order dated 30th April 2005, the learned Judicial Magistrate First Class, Court No.7, Pune allowed the said application by granting monthly maintenance of Rs.1000/- to the first Respondent and Rs.1300/- to the son from the date of application. An Application being M.A.No.3308 of 2005 was filed by the first Respondent for recovery of the maintenance amount granted under section 125 of the said Code. In the said Application, on 6th January 2006, an Application was filed by the present Petitioner by invoking the provisions of section 127 of the said Code for setting aside the order dated 30th April 2005 passed by the learned Magistrate under section 125 of the said Code. It is not in dispute that an Application made by the Petitioner in the said Misc. Application No.3308 of 2005 for stay of execution of the order dated 30th April 2005 granting maintenance has been rejected. It is also not in dispute that the Petitioner has not challenged the order by which the Application for stay has been rejected.

4. As order dated 30th April 2005 was not complied with by the Petitioner, as stated aforesaid, Criminal Misc.Application No.3308 of 2005 was filed by the first Respondent under section 125 (3) of the said Code for recovery of the amount of maintenance. Similarly, Criminal Misc. Application No.4 of 2006 was filed by the first Respondent for recovery of maintenance amount. The learned Magistrate issued a distress warrant for recovery of Rs.27,600/- from the petitioner. In Misc. Application No.3308 of 2005, the learned Magistrate issued a distress warrant for recovery of Rs.4100/- against the Petitioner. Being aggrieved by the said two orders of issuing distress warrants, the aforesaid Revision Application Nos.182 and 183 of 2006 were filed by the Petitioner in the Sessions Court. By the impugned Judgment and Order dated 3rd July 2006, the learned 5th Ad hoc Additional Sessions Judge, Pune dismissed both the Revision Applications.

5. On 17th August 2006, this Court passed an ad-inteim order recording a statement of the Petitioner to deposit a sum of Rs.27,600/- in this Court within a period of one week from that date. It is not in dispute that the Petitioner has deposited a sum of Rs.27,600/- in this Court. The said amount covers the order of recovery passed in Misc. Application No.4 of 2006.

6. The learned Advocate for the Petitioner submitted that the learned Judicial Magistrate First Class committed an error by

passing the order of recovery by issuing distress warrants during the pendency of Application under section 127 of the said Code. He submitted that the order dated 30th April 2005 for grant of maintenance was obtained by the first Respondent by suppressing the material facts. He submitted that notwithstanding the order of interim alimony passed in Marriage Petition No.140 of 2002, the learned Magistrate has passed an order of maintenance for the period covered by the aforesaid order of the Civil Court. He submitted that an Application under section 127 of the said Code filed by the Petitioner has remained pending and during the pendency of the said Application, the distress warrants ought not to have been issued. He submitted that the first Respondent is claiming maintenance for the period for which maintenance has already been paid to her as per order passed in Marriage Petition No.140 of 2002. He submitted that the application under section 127 be ordered to be heard expeditiously and the first Respondent may not be permitted to withdraw the amount deposited by the Petitioner in this Court.

7. The learned Advocate for the first Respondent submitted that the recovery which is sought to be made by the first Respondent is only for a period for which interim alimony was not paid in Marriage Petition No.140 of 2002. He has incorporated a chart in the Affidavit-in-reply of the first Respondent disclosing the amount due and payable to the first Respondent. He submitted that no interference is called for as the order granting maintenance is final as of today. He

submitted that the first Respondent is entitled to withdraw the amount deposited by the Petitioner. He pointed out that the amount payable in Misc. Application No. 3308 of 2005 is not deposited by the Petitioner.

8. I have considered the submissions. As of today the order dated 30th April 2005 passed under section 125 of the said Code in favour of the first Respondent is operating. An Application made by the Petitioner for grant of stay of operation of the said order during the pendency of an Application under section 127 of the said Code has been admittedly rejected and the said order of rejection has not been challenged by the Petitioner. As the Judgment and Order dated 30th April 2005 is operating, it is difficult to find fault with the orders passed by the learned Trial Judge in Misc.Application Nos.4 of 2006 and 3308 of 2005 of issuing distress warrants for recovery of sum of Rs.27,600/- and Rs.4100/- respectively. As the order dated 30th April 2005 is in force, the said order has to be implemented and the Petitioner is required to comply with the said order. Only because an Application is pending under section 127 of the said Code, the Petitioner cannot refuse to comply with the order of payment of maintenance.

9. So far as Misc.Application No.4 of 2006 is concerned, recovery was in the sum of Rs.27,600/- and the said amount is already deposited by the Petitioner in this Court. Therefore, warrant issued in the said Application cannot be now executed.

In Misc.Application No.3308 of 2005, the warrant was for recovery of Rs.4100/-. The said amount will have to be deposited by the Petitioner. For that purpose, reasonable time can be granted to the Petitioner.

10. The contention of the learned Counsel for the Petitioner is that the amounts deposited by the Petitioner should not be allowed to be withdrawn. There is no merit in the said submission. The chart incorporated in in the Affidavit in reply of the first Respondent clearly shows that the distress warrants were not issued for amounts payable for the periods for which interim alimony is paid as per order of the Civil Court in Marriage Petition No.140 of 2002. Even if the Petitioner succeeds in the Application under section 127 of the said Code, it is obvious that he will be entitled to appropriate relief. Even if the first Respondent is permitted to withdraw the amounts, it is obvious that the withdrawal will be subject to final outcome of the Application under section 127 of the said Code. No fault can be found with the impugned orders.

11. In my view, it is in the interests of both the parties that the Application under section 127 of the said Code should not remain pending and the same should be heard expeditiously.

12. Hence, the Petitions are disposed of by passing the following order :

i) The warrant of recovery of Rs.27,600/- issued in

Misc.Application No.4 of 2006 shall not be executed in view of the deposit of Rs.27,600/- made by the Petitioner in this Court.

ii) The first Respondent is permitted to withdraw the said amount of Rs.27,600/- deposited in this Court. It is obvious that the withdrawal of the said amount will be subject to final outcome of the Application under section 127 of the said Code of 1973 filed by the Petitioner.

iii) The warrant for recovery of Rs.4100/- issued in Misc.Application No.3308 of 2005 will not be executed subject to condition of the Petitioner depositing the amount of Rs.4100/- in the Trial Court within six weeks from today. If the amount is not deposited within stipulated period, the warrant will forthwith become executable.

iv) If the sum of Rs.4100/- is deposited by the Petitioner, the first Respondent will be entitled to withdraw the said amount. It is made clear that the withdrawal will be subject to final outcome of the Application under section 127 of the said Code.

v) Application made by the Petitioner under section 127 of the said Code, if it is not decided till today, shall be disposed of by the trial Court as expeditiously as possible and preferably on or before 31st March 2007.

vi) It is made clear that order passed by this Court shall not be construed as stay of execution and operation of order dated 30th April 2005 passed in Criminal Misc. Application No.32 of 2003 filed by the first Respondent.

vii) All contentions of the parties in the pending Application under section 127 of the said Code filed by the Petitioner are expressly kept open.

viii) Subject to what is stated above, impugned Judgments and Orders are confirmed.

ix) Writ Petitions are disposed of in above terms.

JUDGE